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## THE DATZ FOUNDATION

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Nov. 12, 2003

To: United States Department of State

Re: State/AR-01/96, Proposed Regulations to Implement  
The Hague Convention on Intercountry Adoption

I write as director of a licensed adoption agency with licenses in Virginia, North Carolina, Maryland, and the District of Columbia. For nearly twenty years I have worked in the field of inter-country adoption, both as an agency director and as attorney specializing in adoption law.

I have reviewed the proposed regulations to implement The Hague Convention on Intercountry Adoption in the United States, and offer the following comments:

Subpart F, 96.33(b): requires an annual audit

Comment: This is sound financial practice for any business, especially a non-profit corporation.

Subpart F, 96.33(d): Adoption agencies must maintain cash reserves to meet operating expenses for three months.

Comment: This provision is sound. Inadequate cash reserves lead to unwise practices on the part of agencies. For example, due to circumstances beyond the agency's control, multiple refunds must sometimes be made to prospective adoptive families. A shortage of cash reserves would necessarily entail a delay in issuing refunds, thus engendering ill will on the part of the family.

Subpart F, 96.33(h): Adoption agencies must carry \$1,000,000 per occurrence in professional liability insurance.

Comment: It is unrealistic to expect that US-based adoption agencies should be held responsible for the errors and misdeeds of individuals and entities outside the United States. The regulations suggest that an agency could bring a legal action against its

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foreign supervised providers, but the likelihood of prevailing in such a lawsuit and actually collecting a judgment is slim indeed.

Furthermore, what insurance carrier will agree to cover not only a US-based agency, but also its foreign providers? The agency with which I am affiliated has located a single insurance provider willing to provide professional liability insurance. The policy does NOT cover our foreign providers. The most recent annual premium was \$4,000, and our agency places fewer than 120 children per year. I ask the authors of the regulations to make contact with the insurance industry and extract guarantees that carriers will be willing to provide the comprehensive liability insurance as envisioned—and at a reasonable annual cost.

Speaking as an attorney, I would suggest that requiring adoption agencies to carry \$1,000,000 in insurance per occurrence would invite an avalanche of frivolous litigation. The tiniest anomaly in an intercountry adoption could potentially lead to a lawsuit, since the litigant would have little to lose in filing such an action.

Subpart F, 96-34: Incentive fees and contingency fees are prohibited.

Question: Given the current competition among US-based agencies, it is standard industry practice currently to pay incentive fees to persons who bring a prospective adoptive family to an agency. In other fields, incentives, commissions, and contingency fees are paid to persons responsible for contributing to the success of an enterprise. Why should this practice be prohibited in the intercountry adoption field?

Subpart F, 96-46 (c)(1): The adoption agency assumes tort, contract and other civil liability to the prospective adoptive parents for the foreign supervision provider's provision of the contracted adoption services.

Comment: See above, for Comment under Sec. 96.33(h)

Yours sincerely,



Mark Eckman, Dir.  
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